

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule
Number

2019-5

Rule Number

He-W 536

1. Agency Name & Address:

**Dept. of Health & Human Services
Office of Medicaid Business and Policy
129 Pleasant St.
Concord, NH 03301**

2. RSA Authority:

RSA 161:4-a, IX

3. Federal Authority:

42 CFR 440.90

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

X

Readoption w/amendment

5. Filing Date: **January 22, 2019**

6. Short Title: **Medical Services Clinics**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

The proposed interim rule, He-W 536, describes the requirements for and services available under medicaid for medical services clinics, including recipient eligibility requirements, provider participation requirements, service limits, covered services and payment.

Most of the rule expires on 2/8/2019. This proposal will allow the rule to remain in affect under RSA 541-A:19, I(d) and allow the Department time to determine what changes need to be made, if any, to the rule during regular rulemaking. The provisions of He-W 536 that are not expiring are in He-W 536.01 on definitions and have been included so that the proposal as a whole is understandable.

9. Listing of people, enterprises, and government agencies affected by the rule:

The groups affected by this rule are medical services providers who provide services within a clinic setting and medicaid recipients who utilize medical services clinics

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

Rule	Federal Regulation Implemented
He-W 536.01	42 CFR 440.90
He-W 536.02	42 CFR 440.210, 42 CFR 440.220 & 42 CFR 440.225
He-W 536.03	42 CFR 440.90
He-W 536.04	42 CFR 440.230 and 42 CFR 440.240
He-W 536.05	42 CFR 440.90, 42 CFR 440.230 & 42 CFR 440.240
He-W 536.06	42 CFR 455, 42 CFR 456
He-W 536.07	42 CFR 433.139
He-W 536.08	42 CFR 447.15, 42 CFR 430.0, 42 CFR 447.204 & 42 CFR 431.107

11. Summary of the effect upon the state if the rule were not adopted:

If the interim rule were not adopted, the Department would not be able to have specific requirements for medical services clinics such as methadone clinics.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

February 15, 2019

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

Not applicable.

CHAPTER He-W 500 MEDICAL ASSISTANCE

Readopt He-W 536.01, effective 2-8-11 (Document #9860), as amended effective 7-1-12 (Document #10139), cited and to read as follows:

PART He-W 536 MEDICAL SERVICES CLINIC

He-W 536.01 Definitions.

- (a) “Department” means the New Hampshire department of health and human services.
- (b) “Medicaid” means the Title XIX and Title XXI programs administered by the department which makes medical assistance available to eligible individuals.
- (c) “Medical services clinic” means a facility or a mobile immunization provider that is not part of a hospital but is organized to provide preventive, diagnostic, therapeutic, rehabilitative, or palliative services to outpatients.
- (d) “Mobile immunization provider” means an agency organized to provide immunizations at host facilities.
- (e) “Recipient” means any individual who is eligible for and receiving medical assistance under the medicaid program.
- (f) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.
- (g) “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

Readopt He-W 536.02-536.08, effective 2-8-11 (Document #9860), to read as follows:

He-W 536.02 Recipient Eligibility. All Title XIX recipients shall be eligible for services delivered by a medical services clinic in accordance with He-W 536.

He-W 536.03 Provider Participation. All participating medical services clinics shall meet the criteria in either (a) or (b) below.

- (a) Medical services clinics that are not mobile immunization providers shall meet the following criteria:
 - (1) Be composed of New Hampshire licensed practitioners who meet the provider requirements for the particular medical service being performed as set forth in He-W 522 through He-W 573;
 - (2) Provide recipient care that is under the supervision of a licensed physician affiliated with the clinic which shall mean that:
 - a. The physician is readily available to provide direction either by phone or in person;
 - b. The physician has seen the recipient as a patient at least once and assesses the need for continuing care as necessary; and
 - c. The physician assumes professional responsibility for the services provided to the recipient;

- (3) Provide medical care on an outpatient basis;
 - (4) Be organized and operated independently from a hospital pursuant to 42 CFR 440.90;
 - (5) Be a New Hampshire enrolled Title XIX provider; and
 - (6) Request and obtain prior authorization from the department before providing services which require prior authorization as specified in He-W 522 through He-W 573.
- (b) Medical services clinics that are mobile immunization providers shall meet the following criteria:
- (1) Be composed of, and provide immunizations by, New Hampshire licensed practitioners whose licensure allows them to provide immunizations;
 - (2) Be under contract with, or have a current vaccine provider agreement with, the department's division of public health services;
 - (3) Provide immunizations to recipients in settings such as walk-in clinics, retail stores and outlets, pharmacies, and schools;
 - (4) Provide immunizations as Title XIX services only in those settings and for those types or ages of recipients addressed in the contract or agreement in (2) above;
 - (5) Provide services “under the direction of a physician”, which means through standing orders or other indirect supervision where the physician is not necessarily on site but who assumes professional responsibility for the services provided to the recipient;
 - (6) Affiliate with the directing physician through a contractual agreement or any other formal arrangement which obligates the physician to supervise the care provided to the recipient by the clinic;
 - (7) Be organized and operated independently from a hospital pursuant to 42 CFR 440.90; and
 - (8) Be a NH enrolled Title XIX provider.

He-W 536.04 Service Limits. The services provided by a medical services clinic shall be subject to each of the specific service limits and provider requirements for the services delivered and which are set forth in He-W 522 through He-W 573.

He-W 536.05 Covered Services.

(a) Except for those clinic providers who meet the mobile immunization criteria in He-W 536.03(b), covered services provided by a medical services clinic shall include Title XIX covered services that are referenced in He-W 522 through He-W 573.

(b) Covered services provided by clinic providers who meet the mobile immunization criteria in He-W 536.03(b) shall include only medically necessary immunizations ordered by the directing physician.

He-W 536.06 Utilization Review and Control. The department’s surveillance and utilization review of subsystems (SURS) unit shall monitor utilization of medical services clinics in accordance with 42 CFR 455, 42 CFR 456, and He-W 520.

He-W 536.07 Third Party Liability. All third party obligations shall be exhausted before Title XIX shall be billed in accordance with 42 CFR 433.139.

He-W 536.08 Payment for Services.

(a) Payment for the services provided to recipients shall be made in accordance with the rates established by the department for the individual services provided in accordance with RSA 161:4, VI(a).

(b) The provider shall submit claims for payment to the department's fiscal agent.

(c) The provider shall maintain supporting records in accordance with He-W 520.

APPENDIX

Rule	Federal Regulation Implemented
He-W 536.01	42 CFR 440.90
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